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SUBJECT: 2003 EXPROPRIATION REPORT: HONDURAS

REF: SECSTATE 83098

1. (U)
HONDURAS

The United States Government is aware of thirteen (13) claims of United States persons that may be outstanding against the Government of Honduras (GOH). The U.S. Government is also aware of numerous other investment disputes involving U.S. investors, the majority of which have arisen out of inadequate titling procedures and involve disputes between U.S. citizens and private Honduran citizens.

2. (U) Eight of the claims described below involve the Honduran National Agrarian Institute (INA) and land invasion by squatters. Land invasions are common for both Honduran and foreign landowners. According to the National Agrarian Reform Law, idle land fit for farming can be expropriated and awarded to the landless poor. Generally, an INA expropriation case begins after squatters target and invade unprotected property. The squatters then file for the land with the INA under the Agrarian Reform Law. In most cases, pursuing the subsequent legal avenues have proven to be costly and time consuming, and have rarely lead to positive results. The U.S. Embassy is actively engaged in dialogue with the INA and claimants in order to encourage progress toward resolution of outstanding disputes. Most cases reported below require further legal action in Honduran courts by the claimants or decisions by the court.

3. (U) a) Claimant A

b) 1985

c) Claimant A's family land known as Jerico was taken over by the Mayor of Trujillo in 1985. That same year, the Municipality began titling and selling off parcels of Claimant A's land. By 1991 Claimant A had won every court case up through the Supreme Court level, thereby declaring Claimant A's family as the legal owners of Jerico lands. Claimant A requested that the public registrar's office inscribe the court's rulings and correct the situation in the public registry, having falsely registered the illegal titles.

To date the Municipality of Trujillo has not returned the parceled sections of land to Claimant A's family. In May 2002, after Embassy advocacy, the public registrar informed the Embassy that Claimant A's lands were officially inscribed in the registry. Legally, that office can no longer register titles issued by the Municipality for Jerico lands. Claimant A alleges that the Municipality continues to title and sell Jerico lands under a different name.

In April 2003, the Embassy informed Claimant A of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant A informed the Embassy the family is interested in entering into arbitration with the Municipality, however the Mayor is not. The Mayor instead wishes to draft a private, extra-judicial agreement with Claimant A's family. The Embassy continues to encourage the two parties to reach an agreement.

4. (U) a) Claimant B

b) 1984

c) Claimant B inherited 2,417 acres of land from his father. Claimant B's dispute started in 1963 when peasant groups squatted on his father's land. Allegedly in 1975, INA signed a letter of intent to purchase the land but never did. In 1984 when small farmers began squatting on Claimant B's land near Nacaome, Valle Department, Claimant B again offered to sell the land to INA. Claimant B reported he has documents showing that the INA intended to initiate expropriation proceedings in 1989, though it is not entirely clear that this process was ever actually started. Claimant B reports that in 1992 INA responded it was no longer interested in purchasing the land. INA decided not to follow through with the expropriation order, but instead suggested that Claimant B sue to have the squatters removed. Claimant B may remove the liens in civil-court procedures and get

a court order to remove the squatters. Due to Claimant B's ill health, legal proceedings were never initiated.

In June 2002, Claimant B's son reported that a court case is still an option. In April 2003, the Embassy informed Claimant B of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant B indicated he will not pursue arbitration due to his skepticism about the arbitration procedure. The Embassy considers this case inactive at this time, pending further action by Claimant B.

15. (U) a) Claimant C

b) 1992

c) In 1990 Claimant C's land in Cofradia, Cortes Department was invaded by a group of squatters. In 1992, the INA issued a certification of occupation (title) to the squatters. Claimant C reports difficulty in discussing the case with GOH officials, who claim not to have taken action against the land. In 1995 INA realized this land is classified as urban and therefore claimed to have no authority to resolve the dispute. The agency said it can neither give the land to the squatters nor evict them. In 1996 the INA also reported that others have claims to the land in addition to the squatters and Claimant C. In December 1998 INA issued a resolution denying a petition presented by Claimant C to annul the title (formerly issued by INA) held by the campesino squatters. Claimant C has not contested the granting of this title in court.

At various times in recent years the Embassy has assisted Claimant C in communicating with INA concerning his claim. In June 2002, Claimant C reported that he may seek to evict the squatters in court. In April 2003, the Embassy informed Claimant C of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. The Embassy has yet to receive a response from Claimant C concerning arbitration and considers this case inactive at this time, pending further action by the claimant.

16. (U) a) Claimants D

b) 1974

c) Claimants D are a U.S. citizen brother and sister with 42 hectares of property near Balfate, Atlantida Department. Claimants D report squatter problems beginning in 1974 when the INA reportedly placed squatters "temporarily" on their land. Despite repeated promises from GOH officials, no action has been taken to evict these squatters. A group of squatters who arrived more recently and who repeatedly threatened the owners was removed by Honduran authorities at the request of the Embassy, which has worked extensively on Claimants' behalf. According to INA attorneys, in 1974 INA began proceedings to expropriate much of the land belonging to Claimants D.

In late 1995, INA officials told the Embassy that it was planning formally to expropriate a portion of the property, not including valuable beachfront, and compensate Claimants D. In 1997, GOH officials confirmed this remained their intention. One of the Claimants visited the Embassy and reiterated opposition to the expropriation. While in the past Claimants D had reportedly contracted with a lawyer to prosecute their claim, the Embassy has no current knowledge regarding the status of Claimants D's legal actions. The most recent information received by the Embassy confirms that INA is in the final stages of expropriating the property. Despite not hearing from Claimants D since 1996, the Embassy, through regular communication with the INA office in Tegucigalpa, has advocated for a fair and transparent resolution to this case. In April 2003, the Embassy informed Claimants D of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. The Embassy has yet to receive a response from Claimant D concerning arbitration and considers this case inactive at this time, pending further action by the claimant.

17. (U) a) Claimant E

b) 1975

c) Claimant E contacted the Department of State in July 1996, alleging that his property, which he had leased from INA and then developed into a large banana plantation, had been invaded by squatters with the encouragement of GOH officials. Claimant E explained that he had previously filed a lawsuit in Honduran courts and lost. Claimant E has exhausted all administrative and legal avenues of recourse, culminating in an unfavorable Supreme Court ruling.

The Embassy has helped arrange meetings between Claimant E and the President of the Supreme Court, the Vice-President of the country and the INA Director. The Department of State has

reviewed information and evidence provided by Claimant E pertaining to his claim and his efforts to resolve it, and is considering whether the circumstances of his case would support a U.S. Government espousal action based upon a denial of justice claim.

Honduran government officials maintain that while Honduran law requires the payment of compensation for improvements made on leased land that is expropriated under Honduras' land reform laws, the Honduran Supreme Court decision against compensation for Claimant E makes such a settlement impossible. In 2002, the Embassy has met with several high level representatives in the Honduran government to push for consideration of possible forms of resolution of this and similar cases. GOH officials, however, repeatedly state that since this case has been decided at the Supreme Court level, there is nothing more that can be done for Claimant E and they consider this case closed.

18. (U) a) Claimant F

b) 1991

c) In 1991, a squatter group invaded Claimant F's property near Guaimaca, Francisco Morazan Department. INA issued the squatters a "certificate of occupation" for the land in 1992. The INA subsequently revoked the certificate when Claimant F contested it, but the squatter group remained. Claimant F later offered to give the group a portion of the property to resolve the dispute. The squatters declined the offer, and did not allow anyone to enter the land. They threatened violence against people seeking to evict them and several times threatened to kill Claimant F.

Claimant F contacted the Embassy in February 1998 to ask for assistance in resolving the case. In April 1998, Claimant F traveled to Honduras, met with the Embassy, and hired a new attorney. Claimant F, Embassy officers, and Claimant F's attorney met with the INA's attorney several times to discuss the case. The INA agreed to work with Claimant F to persuade the squatters to accept Claimant F's prior offer to avoid a court battle.

Working closely with the Embassy, the INA accepted Claimant F's offer to donate 176 hectares of agricultural land to the INA to give to the campesino squatters in return for INA's help in evicting the squatters from the rest of his land. In May 2001, Claimant F filed a criminal suit against the squatters, who were summarily evicted from the property. However, a few of the original squatters reinvaded the land several weeks later. Claimant F indicated that the offer to donate substitute land was conditioned on certain actions by the INA and that the offer had expired.

In January 2003, INA expropriated 176 hectares of Claimants F's land and granted him 80,020.36 lempiras in compensation (USD 4,644.25 - roughly USD 10 per acre). Claimant F has appealed to the National Agrarian Counsel for a overturning of the INA's resolution to expropriate his land. Claimant F's appeal is currently pending and he has yet to receive compensation due to his pending appeal. In April 2003, the Embassy informed Claimant F of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. The Embassy has yet to receive a response from Claimant D concerning arbitration.

19. (U) a) Claimant G

b) 1993

c) Claimant G purchased land in Comayagua, Comayagua Department, in 1993. A group of campesino squatters subsequently invaded the land and allegedly received INA support. Claimant G won a complaint before the INA and paid the squatters for improvements they made on the land in anticipation of their removal. However, the INA ignored its own ruling, gave title to the squatters, and moved to annul Claimant G's title. On June 30, 1998, a court ruled against Claimant G and ordered to revoke the title. Subsequently, INA accepted the court's ruling and annulled Claimant G's title. In May 2000, Claimant G filed a legal procedure asking for the Supreme Court to review the case. In December 2000, per a Supreme Court request, the INA sent its file to the Court. The Embassy understands that this case is still pending. In April 2003, the Embassy informed Claimant G of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. The Embassy has yet to receive a response from Claimant G concerning arbitration and considers this case inactive at this time, pending further action by the claimant.

10. (U) a) Claimant H

b) 1998

c) Claimant H owned a fishing boat registered in Florida.

When the boat arrived in Roatan, Bay Islands, Honduras, in 1987, the Honduran Navy allegedly seized it without justification (the claim that there was no justification for the seizure remains unsubstantiated). After years of litigation to recover the boat, Claimant H was notified in 1996 that the Navy had sold the boat in 1989 by executive decree. However, the decree was not published in the official gazette until 1996. Claimant appealed through the Honduran court system up to the Supreme Court, losing each time on procedural grounds. The Embassy is not aware of any recent developments in this case.

11. (U) a) Claimant I

b) 1999

c) Claimant I owns land near El Progreso, Yoro Department. The land suffered from squatter invasions for more than 30 years. In 1969, Claimant I's now-deceased husband signed an agreement with INA, donating some land to distribute to squatters in return for INA's promise to protect the rest of the land from further invasions. Notwithstanding the 1969 agreement, the INA expropriated an additional parcel of land in 1987 that had been occupied by a separate group of squatters. The new group of squatters subsequently illegally sold the land to a third party not eligible to buy it under the land reform law.

In 1999, INA confirmed that the property belongs to Claimant I and in 2000 issued an eviction order to evict the third-party occupants. The police refused to recognize INA's eviction order. In 2001, the local court rejected Claimant I's request for an eviction and in June 2002, the Appeal's court again ruled against Claimant I. Claimant I informed the Embassy in late 2001 that her attorney had received death threats regarding the case and that the attorney's property had been damaged. Claimant I may appeal the unfavorable ruling in the Supreme Court. The Embassy routinely raises this case with Honduran court and government officials and will continue to assist Claimant I's efforts to recover the land. In April 2003, the Embassy informed Claimant I of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant I responded she is not interested in pursuing arbitration.

12. (U) a) Claimant J

b) 2000

c) Since 1927, Claimant J's Honduran wife's family has owned the title to 44 hectares of urban land in Trujillo, Colon Department. Beginning in the mid 1990s, the land was invaded by squatters. Over the years, Claimant J's family won a total of seven eviction judgments, only to see the land invaded anew after each eviction. In 1999, Claimant J requested from the Municipality of Trujillo permission to divide the property into lots for development. The permission was never granted. In 2000, the property was invaded for the eighth time. In late 2000, before the court ruled on the eviction, the Municipality began expropriation proceedings, effectively freezing the eviction procedure.

Claimant J suspects that the squatters invaded the land with the tacit approval of local political leaders. In a May 2001 meeting with an Embassy officer, the Mayor of Trujillo admitted that the Municipality was expropriating the land, but contradicted himself on the justification for the expropriation. Legal documents and correspondence show that Claimant J has not been offered compensation. While the Municipality has finished its administrative procedure to expropriate the property, the case is still pending resolution in court. In a May 2002 meeting with the Ambassador, municipal officials admitted that the previous municipal administration may have made a mistake in expropriating Claimant J's property. The officials stated that the Municipality of Trujillo would respect the decision of the court. Embassy officers consistently urge Honduran court and government officials to reach a fair resolution of this case. Embassy staff have stayed in touch with local law enforcement officials when the situation appears to have potential for violence. In April 2003, the Embassy informed Claimant J of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant J has shown some interest concerning arbitration, but to date has not moved to file his request with the Attorney General's office. The request needs to be filed by July 29, due to the short time frame designated by the law.

13. (U) a) Claimant K

b) 1999

c) Claimant K owned 41 hectares of property on Utila, Bay Islands, to be used to develop a tourism project. Claimant K estimates the value of the property at approximately \$2.9 million. In 1999, the Ministry of Public Works announced the public tender to build a new airport in Utila on Claimant K's land and subsequently expropriated Claimant K's property without

paying compensation. Claimant K requested compensation from the Ministry of Public Works in late 2001. Embassy officials urged the Ministry on three occasions in 2002 to effect prompt and effective compensation. Ministry officials solicited the court in Utila to confirm the legal background regarding the expropriated property. The court has not yet issued its opinion. In June 2002, Ministry officials said that Claimant K's case will be submitted to an inter-agency commission for a determination of the value of the land. In a January 2003 meeting with Embassy officials presidential legal advisors were informed of Claimant K's case. The advisors said that they would address the issue of compensating Claimant K with the Minister of Public Works. The Embassy has not received any confirmation that this was done.

In April 2003, the Embassy informed Claimant K of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. Claimant K's attorneys informed the Embassy that this case is in its final stages. They are waiting on a final evaluation to calculate the economic compensation to be awarded.

14. (U) a) Claimant L

b) 1976

c) Claimant L owns land on the southeastern edge of Honduras in territory that once was Nicaragua until the two governments moved the border in 1960. In 1976, Claimant L's father (then owner) filed to register his lands with the corresponding land registry office in Honduras but never received any reply. In 2003, when Claimant L inherited the property she discovered the INA had parceled off and sold almost half of the 3,460 acres of land. In April 2003, the Embassy informed Claimant L of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings. On April 10, 2003, Claimant L filed an administrative proceeding with the INA with plans to file for arbitration. Claimant L hopes for eventual economic compensation for the invaded lands.

15. (U) a) Claimant M

b) 1995

c) In 1995, the Municipality of La Ceiba issued a title for land owned by Claimant M to a local Honduran family. This family in turn sold the lands to a third party family with very strong political influences. Claimant M's attorney filed a law-suit to cancel said transaction, without success. Only after continued Embassy advocacy was the case finally sent to the Attorney General's office in early 2002. In May 2002, the Attorney General sent the case back to the Municipality of La Ceiba for final resolution, having issued his opinion in favor of Claimant M. On March 28, 2003, the Municipality voted to cancel the title originally issued to the local Honduran family. To date, however, the municipality has failed to actually revoke the title, and the Honduran party has renewed its appeal efforts.

In April 2003, the Embassy informed Claimant M of the GOH's new arbitration procedure (Decreto No. 349-2002) that allows the government and claimants to jointly submit disputes for arbitration as an alternative to continued legal proceedings.

16. (SBU) Key to Claimants' Identities:

Claimant A: Eduardo Valenzuela, U.S. citizen, waiver received
Claimant B: Gustavo Valle, U.S. citizen, limited waiver
Claimant C: Carlos Madrid, U.S. citizen, waiver received
Claimant D: Lily Jones Bourne and Edward Purcell Jones, U.S. citizens, no waiver
Claimant E: Alfred McDaniel, U.S. citizen, waiver received
Claimant F: Mark Latty, U.S. citizen, no waiver
Claimant G: Antonia Fajardo de Hubert, U.S. citizen, waiver received
Claimant H: Anthony Fish Company, U.S. company, no waiver
Claimant I: Norma Bogran, U.S. citizen, no waiver
Claimant J: Jaime Castano, U.S. citizen, no waiver
Claimant K: James Harley Crockett, U.S. citizen, no waiver
Claimant L: Maria Cecilia Cerna, U.S. citizen, waiver received
Claimant M: Yolanda Guite, U.S. citizen, no waiver

Pierce